

Committee of Thirteen Report

September 12, 2006

The Committee of Thirteen of the Benton County Quorum Court met Tuesday, September 12, 2006 at 5:00 P.M. in the Quorum Court Room, County Administration Building, Third Floor, 215 East Central, Bentonville, Arkansas.

11 JPs Present:	Allen, Harrison, Hill, Moore, Schindler, Sheridan, Stephenson, Summers, Tharp, Wolf, Wozniak
2 Absent:	Adams, Sampier
Others Present:	Ed Gartin, Richard McComas
Media:	Jennifer Turner – Daily Record, John Henley – Morning News

JP Tim Summers called the meeting to order at 5:00 p.m.

PUBLIC COMMENTS:

Carolyn Winscott spoke in favor of the proposed Nuisance Abatement Ordinance, and noted a particularly offensive area on Highway 94 toward Horseshoe Bend Park.

James Gately stated that the Quorum Court should be aware of what is going on in the County and questioned the integrity of the developers of the Grandview Heights Condo Project. He stated that they are involved in several lawsuits around the state. He distributed advertisements for the Condo project that he said were misleading, including one which listed a 100-slip boat dock as an amenity, when they have no permit for a boat dock.

NEW BUSINESS:

1. Resolution Request – Accepting 2004 Legislative Audit Report

JP Sheridan made motion to forward a Resolution to the September 28, 2006 Quorum Court meeting, seconded by JP Wolf. JP Stephenson asked who initiates the correction of the insufficiencies. Comptroller Richard McComas stated that the Elected Official makes the corrections in their departments, and noted that this is the 2004 report, so any problems listed have already been addressed. JP Sheridan stated that he hoped that the Old Jail Building lease is resolved soon so that it will not continue to appear on the audit. JP Schindler asked if any progress has been made on the Jail Building situation. County Attorney Ed Gartin stated that the attorney who has been hired to handle the situation has been talking with attorneys for the State Auditors to see what would satisfy them. JP Schindler stated that it is an untenable situation that seems to be taking quite a lot of time and he would like to see it resolved. JP Stephenson requested that the attorney handling the case give a progress report to the Quorum Court. Motion passed by unanimous show of hands vote.

2. Resolution Request and Report From Grants Administrator – Kathy Bannister

JP Summers stated that he asked Grants Administrator Kathy Bannister to give an update on the grant activities because he wanted everyone to be aware of the resource that is available to the smaller cities that are represented on the Court. Kathy Bannister went over the list of grant applications that are pending, including the ESRI and Stratus Technologies grant for which a Resolution is being requested. JP Schindler stated that he was glad to see that the County was providing assistance to the Benton County Women's Shelter and that he would like to also provide

aid to the Northwest Arkansas Children's Shelter if possible. JP Tharp stated that there is a group in Decatur that is trying to start up a shelter for women, and he would direct them to Kathy Bannister. JP Sheridan stated that this is only a partial list of the grants that have been awarded since the Grants Administrator was hired, and commended Kathy Bannister for her excellent work. JP Sheridan made motion to approve the Resolution request in order for the grant application process to move forward, and to forward the Resolution to the September 28, 2006 Quorum Court meeting, seconded by JP Wolf. Motion passed by unanimous show of hands vote.

3. Appropriation Ordinance Request – Fund 970 – SSI Incentive, Creating Line Item and Additional Appropriation – Sheriff's Office

Comptroller Richard McComas stated that they are creating a new line item in order to spend money from the SSI Incentive Fund to purchase a new lawn tractor and a new washing machine for the County Jail, and those items will be removed from the 2007 Budget requests. He explained that the SSI Incentive Fund has been accruing since 1999 but none of the money has ever been spent. JP Wolf added that the fund is paid from the Federal Government as an incentive to counties to notify the Social Security office when someone is incarcerated because they are then ineligible to receive benefits. Motion passed by unanimous show of hands vote.

4 Appropriation Ordinance Request: Amend Schedule 4 – County Clerk's Office

JP Stephenson made motion to forward the request to the September 28, 2006 Quorum Court meeting, seconded by JP Tharp. JP Summers stated that this position is needed to staff the new Rogers office. JP Allen stated that he noted in the Finance Committee minutes that there was some discussion regarding whether or not one person would be adequate to staff the office. JP Summers stated that they had discussed the possibility of using a pool of cross-trained employees who could float among the various offices as needed. Richard McComas stated that Human Resources Director Barbara Ludwig is looking into it. JP Sheridan also noted that County Clerk Mary L. Slinkard stated that she would be hiring temporary help for the election in November. Motion passed by unanimous show of hands vote.

5. Appropriation Ordinance Request: Road Grader Purchase – Road Department

JP Tharp made motion to forward the request to the September 28, 2006 Quorum Court meeting, seconded by JP Moore. Comptroller Richard McComas stated that he had looked at the interest rate for financing the purchase, and compared it to the interest received from investments, and there was not a great enough difference to warrant financing the purchase. He said the purchase will be funded from County General, and County Road will repay the amount over the next three years. JP Summers stated that he thought that was a good idea, so that at the end of the three years they will have more equity built up, and if it becomes necessary they can always finance the remaining amount at a future date. He added that this was a very good deal for the County, and he appreciated the information provided by Richard McComas. Motion passed by unanimous show of hands vote.

6. Laptop Computer Proposal – JP Tim Summers

JP Summers stated that they were looking into purchasing 16 laptop computers to use in the Quorum Court Room for agenda purposes. He said that it is something that will eventually happen in the future, and they are simply talking about it. JP Schindler stated that if it is something that will happen in the future, he hoped that it would come after one other event takes place and that is the installation of a fire alarm system in the Courthouse Building. He said he believes that \$40,000 is too close to the \$53,000 requested for the Courthouse alarms, and that is a project that demands instant attention. He added that while they are waiting for more information on the alarms and wiring, the Courthouse continues to be at risk. JP Hill asked about security for the laptops while the

Quorum Court room is vacant. JP Summers stated that Darryl Marks of Information Systems told the Finance Committee that the County currently owns over 100 laptops and they have not had problems keeping track of them. JP Allen stated that he agreed that this is not where they need to be spending money at this time. JP Moore suggested setting up a wi-fi network in the Quorum Court room, so that the JPs could bring their own personal laptops and use them during meetings, and added that it could also be useful during Planning meetings. JP Tharp stated that the network was a great idea, and he too thought that there were other needs for the money. JP Wolf also stated that there are other uses for the money, and that the difficulty of the upkeep has to be considered. She said she did not think it was a good idea. JP Stephenson stated that they should really economize and put everyone back in a horse and buggy. JP Sheridan stated that he is 100% for the idea, but with the other financial needs facing them they should look at it at some later date. JP Summers stated that closes the chapter on the proposal for now.

7. Air Conditioning Repairs – Richard McComas

Comptroller Richard McComas reminded the Committee of the uncomfortable temperature at the August Quorum Court meeting. He said that one of the air conditioning compressors had had to be replaced at a cost of \$17,000 and the Juvenile Detention Center air conditioner was repaired at a cost of \$5,800. He said both situations were emergencies, and will require budget adjustments at the end of the year, but they will need to approve the expenditure as a matter of record. JP Stephenson stated that they received copies of the invoices at the Finance Committee meeting and everything seemed to be in order. JP Stephenson made motion to recognize the necessity of the expenditure, and approve it and forward it to the September 28, 2006 Quorum Court meeting, seconded by JP Allen. Motion passed by unanimous show of hands vote. JP Summers stated that no ordinance would be necessary at this time, so no documentation will be needed for the Quorum Court meeting, but they will approve it there so that it will be included in the minutes.

JP Summers also reported on other items discussed at the Finance Committee meeting, including Jail Collections and Sales Tax Revenue. Comptroller Richard McComas stated that they are \$100,000 ahead of the 2006 projections at this time.

8. Discussion: Proposed Nuisance Abatement Ordinance – Environmental Committee

JP Wozniak made motion to consider the Proposed Nuisance Abatement Ordinance, forward it to the Planning Board for Public Hearing, and hopefully bring it back to the Committee of Thirteen with any changes that need to be made, seconded by JP Tharp. JP Wozniak stated that he has asked Don Day to incorporate all of his suggested changes into a new version of the ordinance in case this version is shot down, so they will have another one ready for consideration. County Attorney Ed Gartin stated that if the Committee is anticipating an alternate ordinance, or if the current one is altered after the Planning Board Hearing, to keep in mind that the final version will have to go back to Planning for an additional Public Hearing. JP Tharp stated that this ordinance has already been re-worked, and he feels it is ready to send to the Planning Board. JP Stephenson stated that he has read the ordinance and the accompanying comments, and he feels the ordinance is typical of the language and format commonly used for such ordinances. He said there is no way that any piece of legislation is going to be the ultimate legislation, and that all of them are evolutionary processes whereby changes in circumstances require changes in the ordinance. He said they have been working on this for months and months, and he favored approving it and sending it on to the Planning Board for Public Hearing. JP Sheridan stated that there is no way that an ordinance of this size and magnitude will not need amending, but they have to have something in effect to make changes to. He favored moving it on to the Planning Board, and noted one group of citizens has been asking for assistance for close to 4 years now, and he fully supports this proposed ordinance.

JP Schindler stated that he supported the motion to send the proposed ordinance to the Planning Board and then on to the Committee of Thirteen. JP Moore stated no ordinance is going to be able to categorize or cover every possible contingency, and success of the ordinance will depend on the personnel enforcing it. He said someone could unfairly write people up for needing minor repairs, or the ordinance could be used as ammunition by neighbors who are feuding, and he hopes that anyone who is hired to enforce it will use common sense and diplomacy. He said he did not think it would be possible to include every little iota of what people can and cannot do, but that after it has been in effect for awhile, they can see what is and is not going to work. He added that he is in favor of passing it on to the Planning Board for Public Hearing, and so that they can return a recommendation to the Committee of Thirteen. He said he thought that is where most of the changes would need to come from.

JP Tharp stated that this will be the second time that this has gone to the Planning Board, and the first time it went they did receive some feedback, and he believes that changes were made which addressed those comments. He said he would hate to see it keep returning and going through the cycle with nothing ever being done, and they will never come up with a piece of legislation that will please everybody. He said that if they are going to vote to send this to Planning tonight, they need to support what they are passing, and that unless they find something illegal or grossly out of line, decide that this is the ordinance that they want passed. JP Wolf stated that it cannot be a working piece of legislation unless it is taken to the people so they need to move it on to the next step, and she believes that the appeal process contained in the ordinance will take care of some of the concerns about abuse that JP Moore expressed. JP Allen asked County Attorney Ed Gartin if he had read some of the criticisms of the ordinance that were submitted. Ed Gartin stated that he had. JP Allen stated that some of them were ridiculous, but that there were a couple of good points. He asked Ed Gartin if he was satisfied that none of them were any great concern and that they had been addressed as best they could. He said that some of the criticisms are merely suggestions on different ways to work the same thing, but one thing they need to address is the blank on Page 7. He said he believes that the ordinance will eventually be tested either through the appeal board, or through the court, which is a good thing. He said that another criticism is that the ordinance is too vague. He said that since it is an abatement ordinance rather than a penal or criminal ordinance, he did not think the court would rule against it due to vagueness.

JP Allen said he was a little concerned about the amount of time a person has to respond once they have been notified. Ed Gartin stated that they are normal time limitations, and that Environmental Services Director Jim Ecker, who will be administering the ordinance, frequently works with people on those time limits when enforcing other environmental regulations. He also added that some of the words, terms, and phrases that have been criticized are things that the court uses. He said that these are ordinances that necessarily involve discomfort, inconvenience, and unreasonableness and are terms that are frequently used in matters of degree which require a certain amount of discretion in the administration of the ordinance. He said he believes it is a legally simple ordinance, and it allows for discretion and emergency abatement. He said it is basically a canned ordinance from the University of Arkansas School of Law, with language from recent State Legislation woven into it, notably the 10-acre exemption in the last Article.

JP Stephenson made motion for a friendly amendment to insert the amount of \$500 in the blank in Article 9, Item F, seconded by JP Wozniak. JP Sheridan asked if a percentage of the abatement cost would be more efficient and fair. The Committee discussed percentage versus a set amount of \$500. County Attorney Ed Gartin explained that if the county has to abate the nuisance, up to \$500 of that cost can be waived for a person who qualifies. Motion to amend the ordinance passed, 8 votes for, 3 votes against (Schindler, Sheridan, Harrison).

JP Summers stated that he is glad to see that agricultural land is exempted, and asked how the 10-acre exemption would affect the Hickory Creek Trailer Park situation. JP Sheridan stated that one

tract will qualify and one will not, and added that the 10-acre exemption was thrown in at the last minute. JP Stephenson stated that the tract in Siloam Springs that they have been dealing with will definitely be impacted, as it is only 6 acres. JP Summers stated that it seems most of the problems are with trailer parks, and asked if they should do something else to specifically address trailer parks. He also said he is disappointed that when there are septic tank problems, there does not seem to be anything the state can do about it other than go and look at it.

JP Summers stated that his other concern that no one has addressed is the cost, and asked if anyone knew if Environmental Services would need more personnel or an additional truck. JP Wozniak stated that if that was what they were going to use to shoot it down, they should not go there. JP Summers stated that he needed to know the cost. JP Wozniak stated they could hire someone instead of buying \$40,000 worth of computers. JP Wozniak stated that Environmental Services Director Jim Ecker indicated at the two committee meetings he attended that he would initially handle it with his current staff and then see where it went from there. JP Stephenson stated that he believes that Jim Ecker and his staff could probably handle the situations that this ordinance is designed to address, because he does not believe there are all that many, and if they get to the point that they need another officer, then they will have to address it at that time. JP Moore stated that they will probably have a lot of calls initially, but it will taper off once the backlog has been dealt with. JP Allen stated they should have some estimate, but they have to start somewhere, just as they did in the Planning Department when they implemented the collection of fees. He also expressed disappointment in the 10-acre exemption. JP Sheridan stated that it is a sore subject with him also, and he will be lobbying the legislature to get it changed.

County Attorney Ed Gartin stated that there may be some administrative costs associated with the additional workload, but there are also abatement costs to consider, and right now there is no money set aside so they will have to be handled on a case by case basis. JP Stephenson stated that he thought the owner was responsible for the abatement. Ed Gartin stated that the County may recoup its cost through property liens, or sale of the property, but that could take months or years down the road. JP Stephenson stated it is also possible there could be legal costs incurred, but he does not see any expense of any great magnitude occurring for at least the first 6 or 7 months.

JP Tharp said that on the subject of abatement, the County cannot get its own property back; they cannot get people moved out of unsanitary trailer parks, so he wondered if they would do any better in enforcing this ordinance. JP Tharp addressed junked vehicles, and said he knows that although we have a junkyard ordinance that requires screening, on the left hand side of Highway 59 going into Gravette, that there is a yard full of cars that have not been moved in years. He asked if the County would now have to bear the cost of moving those cars if the owner refuses. JP Moore noted Article 6, Section B which states that the "proceeds obtained from the sale of any material salvaged as a result of abatement ... shall be deposited to the General Fund of the County." JP Moore pointed out that cars sold for scrap metal are going for \$150 to \$200 each.

JP Wozniak called for the vote, seconded by JP Stephenson. There was discussion regarding whether or not the motion was correct. County Attorney Ed Gartin stated that the condition of the property still has to pass muster under the definition of a nuisance; it has to be a harm to the community to pass legal muster. Just owning junked cars does not make them a nuisance.

JP Summers asked if the Environmental Committee was shooting for the first of the year to enact the ordinance. JP Wozniak stated the sooner, the better. JP Summer said that as important as this is, and he appreciates all of their hard work, it is something that is really going to affect the folks out in the county and they need to give everybody an opportunity to be heard. JP Allen stated that is the purpose of this discussion. JP Harrison pointed out that some people have a lot of money invested in the restoration of junked cars, and there is no allowance in the ordinance for that. JP Stephenson reminded the Chair that a motion was made and seconded to call for the vote. JP Summers said that he is not sure that is a proper motion, and that they are almost through with the

discussion. JP Moore stated that collectors qualify under the screening ordinance because they operate salvage yards, and the cars that JP Tharp referred to are junk, and not worth anything but scrap.

JP Allen stated that they should get moving as quickly as possible, and that if the Justices have any more input, they should make those concerns known along with the public at the Planning Board Public Hearing. JP Wozniak stated that was their intention. Motion passed by unanimous show of hands vote.

OTHER BUSINESS:

JP Stephenson stated that he has received an email from a county resident referencing an article in the Northwest Arkansas News concerning decentralized sewer systems, and that Benton County is faced with the potential of having more and more of these systems. He asked if they should look into an ordinance spelling out who has financial responsibility for the systems and who will oversee them. He said that the Environmental Committee would be the most logical place to get started, and that Washington County has an ordinance that they could look at. JP Wozniak agreed.

ANNOUNCEMENTS:

JP Summers announced that the next Quorum Court meeting would be September 28, 2006 at 5:00 p.m.

The meeting was adjourned at 6:29 p.m.